



FARBER
SCHNEIDER
FERRARI
LLP

261 Madison Avenue, 26th Floor
New York, New York 10016
(212) 972-7040 (o) • (212) 922-1939 (f)
www.FSLLP.com

DANIEL J. SCHNEIDER*, PARTNER
DSCHNEIDER@FSLLP.COM

March 7, 2022

Via ECF

Hon. Naomi Reice Buchwald, U.S.D.J.
United States District Court, S.D.N.Y.
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 21A
New York, NY 10007-1312

Re: Opposition to Plaintiff's Letter Motion to For a Reply
Case No.: 1:21-cv-01791(NRB)—*Rachel Filsoof v. Andrew J. Cole*

Dear Judge Buchwald:

Mr. Fini's self-serving letter makes the point of why Mr. Harnell should be permitted to testify. As an initial matter, Mr. Fini is not competent to aver the reasoning of John Bostany, Esq. who is not part of his law firm, and because Mr. Fini was not a part of the case when Mr. Bostany made the decision to subpoena Ms. Fischer.

In addition, while Mr. Fini has no idea why Mr. Bostany did not ask about treatment, it was more likely because the testimony was already bad enough for Plaintiff, so he did not want to get the answers to those questions. Indeed, Ms. Fischer testified plenty about her belief of how meritless Plaintiff's claims were (I had not had enough time to get citations since we are about to commence Ms. Rowley's deposition and response was required beforehand). and we have reasonable belief that her testimony about Defendant's treatment of Plaintiff would not have been favorable to Plaintiff. The important point is that there was no litigation on this topic, Mr. Fini has no idea as to what Mr. Bostany's motives were and his statements are entirely self-serving. Mr. Bostany was free to ask those questions, but chose not to since he knew the answers would not be in his favor.

Furthermore, Mr. Fini admits that the issues addressed in Ms. Fischer's deposition occurred at or around the filing of the Complaint (ECF 4) and are not raised in the Complaint. The complaint was filed on March 3, 2021 and the events Ms. Fischer testified about were on March 2 and March 3, 2021. They are entirely collateral to the claims and amounted to a way to circumvent discovery rules in criminal court to attempt to get material favorable to the People there. The difference is that they got nothing favorable and are trying to prevent the eliciting of such material here. The Anna Fischer issue is not remotely a red herring.

As a result, the Court has sufficient information, especially in light of the fact that Mr. Fini's letter can serve as a de facto reply, to make a decision on this motion. Accordingly, we oppose the application.

Respectfully submitted,

FARBER SCHNEIDER FERRARI LLP

By: 

Daniel J. Schneider

cc: All Parties via ECF